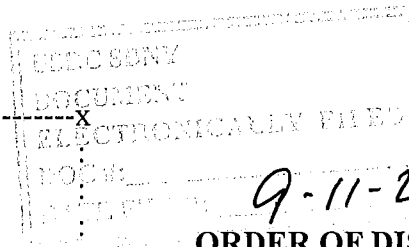


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Chambers of Vincent L. Bricecetti9-11-20
DHUNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKQUENTIN STARKES,
Plaintiff,

v.

C.O. BYRD; C.O. NIEVES (Shield #1748); and
C.O. WAAL RIVERA (Shield #1725),
Defendants.**ORDER OF DISMISSAL**

19 CV 7270 (VB)

Plaintiff, who is proceeding pro se and in forma pauperis, commenced this action by filing a complaint on August 2, 2019. (Doc. # 2). At that time, plaintiff was incarcerated at Westchester County Jail. (See id. at 1).

On November 18, 2019, plaintiff notified the Court that his address had changed, and stated his new address at Metropolitan Detention Center, Brooklyn, New York ("MDC Brooklyn"). (Doc. #8).

As the Court stated in its Order of Service dated December 11, 2019, it is plaintiff's responsibility to notify the Court in writing if his address changes, and the Court may dismiss the action if plaintiff fails to do so. (Doc. #11 at 4).

The December 11 Order of Service was mailed to plaintiff, along with an "Instructions for Litigants Who Do Not Have Attorneys" pamphlet and a blank "Notice of Change of Address" form. (Doc. #12). Like the December 11 Order of Service, the Instructions pamphlet also states it is plaintiff's responsibility to notify the Court in writing if his address changes, and the Court may dismiss the action if plaintiff fails to do so. (See id. at ECF 2).¹

On March 31, 2020, defendants moved to dismiss the amended complaint. (Doc. #20).

¹ "ECF ____" refers to page numbers automatically assigned by the Court's Electronic Case Filing system.

Plaintiff failed timely to oppose the motion to dismiss. Accordingly, by Order dated April 29, 2020, the Court sua sponte extended to May 20, 2020, plaintiff's time to oppose the motion. (Doc. #23). The April 29 Order was mailed to plaintiff at his address at MDC Brooklyn.

Plaintiff failed to oppose the motion or seek an extension of time in which to do so. Accordingly, by Order dated June 4, 2020, the Court deemed defendants' motion to dismiss fully submitted and unopposed. (Doc. #25). The June 4 Order was mailed to plaintiff at his address at MDC Brooklyn.

On June 8, 2020, the Court received notice that its April 29 Order, which was mailed to plaintiff at his address at MDC Brooklyn, was returned as undeliverable because plaintiff was no longer at MDC Brooklyn. Information provided on the Federal Bureau of Prisons website suggested plaintiff had been relocated to United States Penitentiary ("USP") Canaan, in Waymart, Pennsylvania.

Accordingly, by Order dated June 9, 2020, the Court ordered plaintiff to update the Court in writing, by July 9, 2020, as to his current address. (Doc. #26). The June 9 Order warned plaintiff, in bold and underlined font, that if plaintiff failed to update his address by July 9, 2020, the Court may dismiss the case for failure to prosecute or comply with Court orders. (Id.). The Court then mailed the June 9 Order, as well as copies of the April 29 and June 4 Orders, to plaintiff at his address at MDC Brooklyn, and also to the following address:

Quentin Starkes
Reg. No. 79698-054
USP Canaan
U.S. Penitentiary
P.O. Box 300
Waymart, PA 18472

On June 23, 2020, the Court received notice that its June 4 mailing to plaintiff at his address at MDC Brooklyn was returned as undeliverable with the following notation: "Not

Deliverable As Addressed.” Thereafter, on July 9, 2020, the Court received notice that its June 9 mailing to plaintiff at his address at MDC Brooklyn—comprising the April 29, June 4, and June 9 Orders—was returned as undeliverable with the following notation: “Unable to identify address.” However, the June 9 mailing addressed to plaintiff at his suspected address at USP Canaan has not been returned as undeliverable.

Accordingly, by Order dated July 28, 2020, the Court sua sponte extended to August 27, 2020, plaintiff’s time to update his address in writing. (Doc. #27). The July 28 Order warned plaintiff, in bold and underlined font, that if he failed to update his address by August 27, 2020, the Court would dismiss this case pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute or comply with court orders. (Id.). The Court mailed the July 28 Order to plaintiff at his address at MDC Brooklyn and to his suspected address at USP Canaan.

On August 27, 2020, the July 28 Order that was mailed to plaintiff at his address at MDC Brooklyn was returned as undeliverable with the following notation: “Return to Sender, Unable to Identify Addressee, Inmate No Longer at this Facility, Inmate Name and Num[ber] do not Match, Other.” (Doc. #28 at ECF 3). However, the July 28 mailing addressed to plaintiff at his suspected address at USP Canaan has not been returned as undeliverable.

To date, plaintiff has failed to update his address in writing. Indeed, plaintiff last communicated with the Court in December 2019. (See Doc. #14). Accordingly, the Court concludes plaintiff has abandoned this case.

Having considered all of the factors set forth in Lucas v. Miles, 84 F.3d 532, 535 (2d Cir. 1996), the Court dismisses this case with prejudice for failure to prosecute or comply with Court orders. Fed. R. Civ. P. 41(b).

The Clerk is directed to terminate as moot defendants' pending motion to dismiss. (Doc. #20).

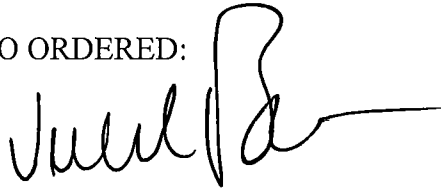
The Clerk is further directed to close this case.

Chambers will mail a copy of this Order to plaintiff at the address on the docket and to plaintiff's suspected address at USP Canaan, noted above.

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore in forma pauperis status is denied for the purposes of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

Dated: September 11, 2020
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Vincent L. Briccetti', with a long horizontal flourish extending to the right.

Vincent L. Briccetti
United States District Judge